

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-1464V

Filed: October 30, 2019

UNPUBLISHED

HEIDI LEVISEE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for petitioner.

Alexis B. Babcock, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Corcoran, Chief Special Master:

On September 24, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a left shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccination received on October 10, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 27, 2019, a ruling on entitlement was issued, finding petitioner entitled to compensation for her SIRVA. On October 29, 2019, respondent filed a proffer on award of compensation (“Proffer”) indicating petitioner should be awarded \$126,283.01 (comprised of \$125,000.00 for pain and suffering and \$1,283.01 for past lost wages).

¹ I intend to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Proffer at 1-2. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award petitioner a lump sum payment of \$126,283.01 (comprised of \$125,000.00 for pain and suffering and \$1,283.01 for past lost wages) in the form of a check payable to petitioner, Heidi Levissee.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

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HEIDI LEVISEE,)	
)	
Petitioner,)	
v.)	No. 18-1464V
)	Chief Special Master Corcoran
SECRETARY OF HEALTH AND HUMAN)	ECF
SERVICES,)	
)	
Respondent.)	
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RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Items of Compensation

On August 26, 2019, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. On the same day, former Chief Special Master Dorsey issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of a flu vaccination administered on October 13, 2016. Based upon the evidence of record, respondent proffers that petitioner should be awarded \$126,283.01. The award is comprised of the following: \$125,000.00 for pain and suffering, and \$1,283.01 for past lost wages. This amount represents all elements of compensation to which petitioner would be entitled under [42 U.S.C. § 300aa-15\(a\)](#). Petitioner agrees.

II. Form of the Award

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of **\$126,283.01**, in the form of a check payable to petitioner.¹ Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Assistant Attorney General

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Torts Branch, Civil Division

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s/ Alexis B. Babcock
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Dated: October 29, 2019

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.